

Clay M. Taylor  
 Bryan C. Assink  
 BONDS ELLIS EPPICH SCHAFER JONES LLP  
 420 Throckmorton Street, Suite 1000  
 Fort Worth, Texas 76102  
 (817) 405-6900 telephone  
 (817) 405-6902 facsimile  
 Email: clay.taylor@bondsellis.com  
 Email: bryan.assink@bondsellis.com

**ATTORNEYS FOR JAMES DONDERO**

Daniel P. Elms  
 State Bar No. 24002049  
 GREENBERG TRAURIG, LLP  
 2200 Ross Avenue, Suite 5200  
 Dallas, Texas 75201  
 (214) 665-3600 telephone  
 (214) 665-3601 facsimile  
 Email: elmsd@gtlaw.com

**ATTORNEYS FOR NANCY DONDERO**

Deborah Deitsch-Perez  
 Michael P. Aigen  
 STINSON LLP  
 3102 Oak Lawn Avenue, Suite 777  
 Dallas, Texas 75219  
 (214) 560-2201 telephone  
 (214) 560-2203 facsimile  
 Email: deborah.deitschperez@stinson.com  
 Email: michael.aigen@stinson.com

**ATTORNEYS FOR JAMES DONDERO  
 AND NANCY DONDERO**

Douglas S. Draper (La. Bar No. 5073)  
 Leslie A. Collins (La. Bar No. 14891)  
 Greta M. Brouphy (La. Bar No. 26216)  
 HELLER, DRAPER & HORN, L.L.C.  
 650 Poydras Street, Suite 2500  
 New Orleans, Louisiana 70130  
 (504) 299-3300 telephone  
 (504) 299-3399 facsimile  
 Email: ddraper@hellerdraper.com  
 Email: lcollins@hellerdraper.com  
 Email: gbrouphy@hellerdraper.com

**ATTORNEYS FOR THE DUGABOY INVESTMENT TRUST**

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE NORTHERN DISTRICT OF TEXAS  
 DALLAS DIVISION**

<b>In re:</b>	§	<b>Case No. 19-34054</b>
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>	§	<b>Chapter 11</b>
	§	
<b>Debtor.</b>	§	
<hr/>		
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
	§	
<b>Plaintiff.</b>	§	
	§	
<b>v.</b>	§	
	§	<b>Adversary No.: 21-03006-sgj</b>
<b>HIGHLAND CAPITAL MANAGEMENT          SERVICES, INC., JAMES DONDERO, NANCY          DONDERO, AND THE DUGABOY          INVESTMENT TRUST,</b>	§	
	§	
<b>Defendants.</b>	§	

**DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, James Dondero, Nancy Dondero and The Dugaboy Investment Trust (“Appellants”) by and through undersigned counsel, hereby submit this designation of the record on appeal of the Memorandum Opinion and Order Denying Arbitration Request and Related Relief [Dkt. No. 115]:

1. *Notice of Appeal* filed on December 16, 2021 [Dkt. No. 127]
2. *Memorandum Opinion and Order Denying Arbitration Request and Related Relief* [Dkt. No. 115], entered on December 3, 2021.
3. Docket entries kept by the bankruptcy clerk in Adversary No. 21-03006-sgj
4. Docket entries kept by the bankruptcy clerk in the main bankruptcy case, Case No. 19-34054.
5. Each of the additional documents and items designated below:

Designation No.	Filing Date	Dkt.	Description
<b>Documents filed in Main Bankruptcy Case- Case No. 19-34054</b>			
1	12/27/19	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/9/20	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course (related document # 281) Entered on 1/9/2020. (Okafor, M.)
3	6/23/20	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
4	7/16/20	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
5	11/24/20	1472	Debtor's Fifth Amended Plan of Reorganization
6	11/24/20	1473	Disclosure Statement for Fifth Amended Plan of Reorganization
7	11/24/20	1476	Order Approving Disclosure Statement
8	1/11/21	1719	Debtor's Second Notice of Executory Contracts to be Assumed by the Debtor

9	1/20/21	1784	Dondero Objection to Assumption and Cure of Executory Contract
10	1/21/21	1791	Debtor's Withdrawal of Assumption of Executory Contracts
11	1/22/21	1808	Debtor's Fifth Amended Plan of Reorganization (as modified)
12	1/22/21	1809	Redline of Fifth Amended Plan of Reorganization (as modified)
13	2/22/21	1943	Order Confirming Fifth Amended Plan of Reorganization
Designation No.	Filing Date	Dkt.	Description
<b>Documents filed in Adversary Proceeding - Case No. 21-03006</b>			
1	09/01/2021	70	Motion to Compel Arbitration and Stay Litigation
2	09/01/2021	71	Appendix in Support of Defendants' Motion to Compel Arbitration and Stay Litigation
3	09/01/2021	74	Motion to Compel Arbitration and Stay Litigation
4	09/15/2021	78	Notice of Hearing
5	09/28/2021	81	Debtor's Objection to Motion to Compel Arbitration and Stay Litigation
6	09/28/2021	82	Debtor's Brief in Support of Its Objection to Motion to Compel Arbitration and Stay Litigation
7	09/28/2021	83	Declaration of John A. Morris in Support of Debtor's Objection to Motion to Compel Arbitration and Stay Litigation
8	09/28/2021	83-1	Exhibit A to Declaration of John A. Morris in Support of Debtor's Objection to Motion to Compel Arbitration and Stay Litigation
9	09/28/2021	83-2	Exhibit B to Declaration of John A. Morris in Support of Debtor's Objection to Motion to Compel Arbitration and Stay Litigation
10	09/28/2021	83-3	Exhibit C to Declaration of John A. Morris in Support of Debtor's Objection to Motion to Compel Arbitration and Stay Litigation
11	11/05/2021	93	Reply to Debtor's Objection to Motion to Compel Arbitration and Stay Litigation
12	11/05/2021	95	Defendants' Joint Witness and Exhibit List
13	11/05/2021	95-1	Exhibit 1 to Defendants' Joint Witness and Exhibit List
14	11/05/2021	95-2	Exhibit 2 to Defendants' Joint Witness and Exhibit List
15	11/05/2021	95-3	Exhibit 3 to Defendants' Joint Witness and Exhibit List
16	11/05/2021	95-4	Exhibit 4 to Defendants' Joint Witness and Exhibit List

17	11/05/2021	95-5	Exhibit 5 to Defendants' Joint Witness and Exhibit List
18	11/05/2021	95-6	Exhibit 6 to Defendants' Joint Witness and Exhibit List
19	11/05/2021	95-7	Exhibit 7 to Defendants' Joint Witness and Exhibit List
20	11/05/2021	95-8	Exhibit 8 to Defendants' Joint Witness and Exhibit List
21	11/05/2021	95-9	Exhibit 9 to Defendants' Joint Witness and Exhibit List
22	11/05/2021	95-10	Exhibit 10 to Defendants' Joint Witness and Exhibit List
23	11/05/2021	95-11	Exhibit 11 to Defendants' Joint Witness and Exhibit List
24	11/05/2021	95-12	Exhibit 12 to Defendants' Joint Witness and Exhibit List
25	11/05/2021	95-13	Exhibit 13 to Defendants' Joint Witness and Exhibit List
26	11/05/2021	95-14	Exhibit 14 to Defendants' Joint Witness and Exhibit List
27	11/09/2021	97	Notice of Court Admitted Exhibits for Hearing Held November 9, 2021 <i>Note: Defendants' admitted exhibits can be found at docket numbers 95-1 through 95-14.</i>
28	11/15/2021	115	Audio File of Hearing Held November 9, 2021 <i>Note: Audio file can be found in Adversary No. 21-03003</i>

6. Each of the hearing transcripts designated below:

Designation No.	Filing Date	Dkt.	Description
29	11/16/2021	102	Transcript of Hearing Held November 9, 2021

### **STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

1. Whether the Bankruptcy Court erred in finding that the arbitration clause was an executory contract rejected pursuant to Bankruptcy Code Section 365.

2. Whether the Bankruptcy Court erred in finding that a company governance/formation document is an executory contract.

3. Whether the Bankruptcy Court erred in finding that a debtor's purported rejection of a contract containing an arbitration clause relieves Debtor of the duty to arbitrate.

4. Whether the Bankruptcy Court erred in finding that the arbitration clause should be considered a separate executory agreement that was rejected.

5. Whether the Bankruptcy Court erred in finding that requiring arbitration in this case would impose undue and unwarranted burdens and expenses on the parties to the detriment of Highland's creditors.

6. Whether the Bankruptcy Court erred in finding that the Appellants have waived any right to invoke the arbitration clause.

7. Whether the Bankruptcy Court erred in finding that the Appellants waived any right to invoke the arbitration clause by not raising the subject of arbitration until after the counts giving rise to the demand for arbitration, Counts V, VI, and VII, were added by the Debtor.

8. Whether the Bankruptcy Court erred in finding that seeking arbitration in the *first pleading after the filing of claims raising the right to seek arbitration* is a "delay" in seeking arbitration sufficient to justify a finding of waiver.

9. Whether the Bankruptcy Court erred in finding that the Appellants Dugaboy and Nancy Dondero waived rights to invoke the arbitration clause by not raising the subject of arbitration before they were added as parties to the Adversary Proceeding by the Debtor.

10. Whether the Bankruptcy Court erred in determining that it would not compel arbitration.

Dated: December 30, 2021

Respectfully submitted,

/s/Deborah Deitsch-Perez

Deborah Deitsch-Perez  
State Bar No. 24036072  
Michael P. Aigen  
State Bar No. 24012196  
STINSON LLP  
3102 Oak Lawn Avenue, Suite 777  
Dallas, Texas 75219  
(214) 560-2201 telephone  
(214) 560-2203 facsimile  
Email: deborah.deitschperez@stinson.com  
Email: michael.aigen@stinson.com

**ATTORNEYS FOR JAMES DONDERO  
AND NANCY DONDERO**

/s/Daniel P. Elms

Daniel P. Elms  
State Bar No. 24002049  
GREENBERG TRAURIG, LLP  
2200 Ross Avenue, Suite 5200  
Dallas, Texas 75201  
(214) 665-3600 telephone  
(214) 665-3601 facsimile  
Email: elmsd@gtlaw.com

**ATTORNEYS FOR NANCY DONDERO**

/s/Clay M. Taylor

Clay M. Taylor  
State Bar No. 24033261  
Bryan C. Assink  
State Bar No. 24089009  
BONDS ELLIS EPPICH SCHAFFER JONES LLP  
420 Throckmorton Street, Suite 1000  
Fort Worth, Texas 76102  
(817) 405-6900 telephone  
(817) 405-6902 facsimile  
Email: clay.taylor@bondsellis.com  
Email: bryan.assink@bondsellis.com

**ATTORNEYS FOR JAMES DONDERO**

/s/Douglas S. Draper

Douglas S. Draper (La. Bar No. 5073)  
Leslie A. Collins (La. Bar No. 14891)  
Greta M. Brouphy (La. Bar No. 26216)  
HELLER, DRAPER & HORN, L.L.C.  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
(504) 299-3300 telephone  
(504) 299-3399 facsimile  
Email: ddraper@hellerdraper.com  
Email: lcollins@hellerdraper.com  
Email: gbrouphy@hellerdraper.com

**ATTORNEYS FOR THE DUGABOY INVESTMENT  
TRUST**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on December 30, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties registered to receive notice in this case.

/s/ Michael P. Aigen

Michael P. Aigen